

REMARKS

Claims 1-7 and 9-25 are currently pending in the subject application, and are presently under consideration. Claims 1-7 and 9-25 are rejected. Claim 1 is amended. This amendment is not meant to limit the claims in any manner. Claims 16-19 are cancelled. Favorable reconsideration of the application is requested in view of the amendments and comments herein.

I. Finality of Rejection

It is respectfully submitted that the final rejection of claims 1-7 and 9-25 was improper, as the Examiner has changed the grounds of rejection and there was no amendment in the most recent office action response, the August 15, 2006 response to the Final Office Action dated June 15, 2006, to necessitate the new grounds for rejection.

The Examiner notes in the Office Action that new grounds of rejection have been advanced, but states that "Applicant's amendment necessitated the new ground(s) of rejection." (See Final Office Action of January 25, 2007, pg. 9). It is respectfully submitted, however, that no amendment has been made to the claims since the December 14, 2005 response to the First Office Action of September 8, 2006. There were no amendments entered for the purpose of appeal. The Examiner has had the Final Office Action of June 6, 2006 and the Advisory Action of September 9, 2006 to address the amended claims, as well as an opportunity to maintain his rejection after the pre-appeal conference.

MPEP §706.07 states that:

Before final rejection is in order a clear issue should be developed between the examiner and applicant. To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a view to avoiding all the grounds of rejection and objection. Switching from one subject matter to another in the claims presented by applicant in successive amendments, or from one set of references to another by the examiner in rejecting in successive actions claims of

substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance of the application or a final rejection.

While the rules no longer give to an applicant the right to "amend as often as the examiner presents new references or reasons for rejection," present practice does not sanction hasty and ill-considered final rejections. The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application.

Applicants have done exactly as the MPEP suggests in amending the claims to avoid all initial grounds of rejection and objection, as evidenced by the Examiner's decision to withdraw those grounds of rejection in lieu of allowing the application to proceed through the appeal process. The Examiner has responded with new grounds of rejection, as is permitted after the reopening of prosecution, but has elected to limit applicants' opportunity to respond to the new grounds of rejection. This is in direct contravention of the stated goal of the above-quoted passage of reaching a clearly defined issue to bring the prosecution to a close. By the logic advanced by the Examiner, it follows that a single amendment to the claims provides a perpetual justification for issuing a final action for the remainder of the prosecution of an application, regardless of changes in the Examiner's position. It is respectfully submitted that this is not the intention of the rule permitting a final action after an amendment to the claims. It is thus respectfully submitted that the final rejection of claims 1-7 and 9-25 was improper and the withdrawal of the final rejection is respectfully requested.

II. Rejection of Claims 1-7 and 9-10 Under 35 U.S.C. § 112, Second Paragraph

Claims 1-7 and 9-10 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which is regarded as the invention. Claim 1 has been amended to correct an error in antecedent basis. Claims 2-7, 9, and 10 were rejected only for their dependence on claim 1. It is respectfully requested that this amendment be entered, as it places the application in better form for appeal.

In light of the proposed amendment, it is thus respectfully submitted that claims 1-7 and 9-10 should now be in condition for consideration, and withdrawal of this rejection is respectfully requested.

III. Rejection of Claims 1-7, 9-15, and 20-25

Each of claims 1-7, 9-15, and 20-25 stand rejected under 35 U.S.C. §102(e) and 35 U.S.C. §103(a) as unpatentable over U.S. Publication No. 2006/0241865 to Smith ("Smith") in view of a number of secondary references. A Declaration under 35 C.F.R. §1.131 is being filed with this Amendment. The Declaration could not be presented earlier, because Smith was first cited in the Final Office Action of January 25, 2007. The Declaration presents facts showing a completion of the claimed invention in this country before March 13, 2003, which is the earliest available priority date of Published Application U.S. 2006/0241865. In view of 37 CFR §1.131(b), it is respectfully submitted that the showing of facts is such, in character and weight, as to establish reduction to practice in this country prior to March 13, 2003. Therefore, it is respectfully submitted that Smith should be withdrawn as a reference.

Each one of claims 1-7, 9-15, and 20-25 was rejected over one or more references including Smith. On the premise that Smith is withdrawn as a reference, applicant respectfully submits that the prior art rejection of claims 1-7, 9-15, and 20-25 is moot, and applicant requests that it be withdrawn.

III. Rejection of Claims 16-19 Under 35 U.S.C. §102(b)

Claims 16-19 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,148,261 to Obradovich, et al. ("Obradovich"). Claims 16-19 have been cancelled. Withdrawal of this rejection is thus respectfully requested.


CONCLUSION

In view of the foregoing remarks, Applicant respectfully submits that the present application is in condition for allowance. Applicant respectfully requests reconsideration of this application and that the application be passed to issue.

Please charge any deficiency or credit any overpayment in the fees for this amendment to our Deposit Account No. 20-0090.

Respectfully submitted,

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